UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,102	01/31/2001	Jonathan S. Goldstone	Q60463	1078

7590   06/28/2006

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EXAMINER
HYUN, SOON D

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Office Action Summary	09/774,102	GOLDSTONE, JONATHAN S.
	Examiner	**Art Unit**	
	Soon D. Hyun	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 April 2006*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

    4a) Of the above claim(s) *1-4,10,11,19-23 and 25-27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-9,12-18 and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   Applicant's election without traverse of Group II (claims 5-9, 12-18, and 24) in the

reply filed on 4/25/2006 is acknowledged.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 5-8, 12, 13, and 15-18 are rejected under 35 U.S.C. 102(e) as being

anticipated by Yavatkar et al (U.S. Patent No. 6,735,702).

        Regarding claims 5, 8, 12, 13, and 15-18, Yavatkar et al (Yavatkar) discloses a

method or a network system for preventing bandwidth congestion on a network (4 in

Fig. 3), comprising:

        providing a destination site router (30 in FIG. 3, col. 1, lines 21-25) connected to

a destination site or a destination server (node 34 in FIG. 3) locally and also to an

Internet connection (col. 1, lines 30-34);

        providing a plurality of origin site (client) routers (nodes 46 and 48 in FIG. 3), one

of which is connected to an attacking site or client (e.g., node 56 in FIG. 3, col. 17, lines

20-22), wherein each of the plurality of sites has a respective address associated with it

(col. 1, lines 30-34);

providing connectivity between the origin and destination routers (a router-router

connection) to the Internet (FIG. 3), but allowing addresses (e.g., nodes 40 and node

54) not corresponding to the attacking site access to internet (col. 17, lines 17-22);

detecting a bandwidth congestion at the destination site router by a watchdog

agent (a firewall), wherein the bandwidth congestion originates at the attacking site (col.

15, lines 63-67);

informing the origin site router and other intermediate routers within the Internet

of the bandwidth congestion and of an attacking address corresponding to the attacking

site from which the bandwidth congestion originated (col. 17, lines 17-20 and col. 18,

lines 60-64).

Regarding claim 6, Yavatkar further discloses that the step of informing is

performed automatically by the destination router (col. 18, lines 54-67).

Regarding claim 7, Yavatkar further discloses that the step of informing is

performed by human intervention (col. 16, lines 22-25).

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yavatkar

et al (U.S. Patent No. 6,735,702).

Yavatkar et al (Yavatkar) lacks the step of preventing is performed until a human

administrator intervenes after determining whether the attacking site should be

permitted to gain access to the Internet. Although Yavatkar does not explicitly disclose

the human administrator permitting access to the Internet, Yavatkar does strongly

suggest this is the case (col. 6, lines 12-18 where the ability of a human operator to

send commands to nodes, instructing the nodes how to behave strongly suggests a

human operator has the capability to allow or prevent a given address from accessing a

node). It would have been obvious to one with ordinary skill in the art at the time of

invention to include the human operator allowing or preventing access to a given node

for the purpose of allowing legitimate users to access the network while stopping

malicious users from accessing the network. The motivation for not allowing malicious

attacks to propagate through the network is to prevent network congestion and thus

allow legitimate users to properly access the network (col. 15, lines 63-64).

6.   Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Yavatkar et al (U.S. Patent No. 6,735,702) in view of Cox et al (U.S. patent No.

6,738,814).

Yavatkar does not explicitly teach that the step of preventing is performed for a

predetermined amount of time during witch it is determined whether the attacking site is

attempting to cause the bandwidth congestion and the attacking site is permitted to gain

access to the internet if it is determined that the attacking site is not attempting to cause

the bandwidth congestion. Cox teaches that that an attacking site is permitted to gain

access to a network when a variable time limit (a predetermined amount of time) is

reached (col. 5, lines 1-3), it is inherent to check whether the attacking site is attempting

to cause the bandwidth congestion during the time limit, because any attack (including

the attacking site) to the network is checked during the predetermined time and the

attacking site is not allowed to gain the network during another variable time limit if the

attacking site is attempting to cause the bandwidth congestion. Therefore, it would have

been obvious to one having ordinary skill in the art to incorporate the method of Cox into

Yavatkar to allow the attacking site to access the Internet if there is no longer attack

from the site.

Response to Arguments

7.   Applicant's arguments filed 11/30/05 have been fully considered but they are not

persuasive.

Applicant argues that "Yavatkar blocks all traffic, including legitimate traffic in

response to an attack., Consequently, Yavatkar teaches away from the present claims,

which permits legitimate traffic during an attack." Examiner disagrees. With reference to

col. 17, lines 17-22 and FIG. 3, the origin router (node 46) blocks traffic from the

attacking site (e.g., node 56), but permits legitimate traffic from nodes (e.g., nodes 40

and 54) during the attack.

Therefore, Examiner believes that the claim rejection is proper.

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S. Hyun
6/20/2006

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